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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,755	11/21/2003	Jeff Wagner	7678.810	1447

7590

08/24/2005

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EXAMINER

STOKES; CANDICE CAPRI

ART UNIT

PAPER NUMBER

3732

DATE MAILED: 08/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/718,755

Applicant(s)

WAGNER ET AL.

Examiner

Candice C. Stokes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 June 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 19-33 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-10, 16, 30 and 33 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 06/13/05
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10, 16, 30 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rubin in view of Eakin (USPN 6,559,351). Rubin discloses an endodontic device 10 for detecting moisture within a root canal comprising an endodontic cone as shown in Fig. 2 formed of water absorptive material and a moisture sensitive chemical indicator. However, Rubin does not disclose the moisture sensitive indicator comprising cobalt salt applied to the water absorptive material that changes color when moistened with water. Eakin teaches how cobalt salt may be used as a chemical indicator applied to a water absorptive material that changes color when moistened with water (see col. 3, lines 13-16). As to Claim 2, Rubin discloses "the paper point of the invention is preferably formed from a piece of triangularly shaped absorbent paper 20 as shown in Fig. 1" (col. 4, lines 1-3). Regarding Claim 5, Rubin teaches a chemical indicator (in this case a pH indicator), which would change one color when moistened with water, but, it is inherent that the chemical indicator would change a different color when moistened with sodium hypochlorite because water has a neutral pH and sodium hypochlorite is a base. As to Claim 16, in a method disclosed by Rubin "a dentist or technician can take a small piece of paper, roll it into a thin small diameter roll having a very small diameter lower end. The roll can then be dipped into a liquid (in this case a pH) indicator to impregnate the paper roll at least at the tip.

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Time must be allotted to any liquid carrier on the paper roll to dry” (col. 4, lines 26-31). It would have been obvious to one having ordinary skill in the art at the time of the invention to incorporate the cobalt salt instead of pH as the chemical indicator used for detecting moisture as taught by Eakin into the endodontic device disclosed by Rubin, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Regarding Claims 3,4, and 9 Rubin and Eakin teach the claimed invention except for the cobalt salt comprising cobalt fluoride, cobalt iodide, or cobalt sulfate and cobalt chloride. It would have been obvious to one having ordinary skill in the art at the time of the invention to use any cobalt salt , since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

As to Claims 6-7 and 10, Rubin and Eakin teach the claimed invention except for the endodontic device initially being blue and changing to pink when moistened with water and black when moistened with sodium hypochlorite. It would have been an obvious matter of design choice to provide the desired colored changes or any color changes as long as the colors are distinguishable from one another, since such a modification would have involved a mere change in color. A change in color is generally recognized as being within the level of ordinary skill in the art.

Allowable Subject Matter

Claims 17,19-24 and 31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 25-29 are allowed.

Response to Arguments

Applicant's arguments filed 06/13/05 have been fully considered but they are not persuasive. The amendments to Claims 1 and 16 do not place the application in condition for allowance because they do not overcome the prior art of record, specifically the Rubin and Eakin references. The combination of Rubin and Eakin provide an endodontic device as claimed where there is a moisture sensitive indicator, specifically the pH indicator present on the tip of the endodontic device disclosed by Rubin. Further, there is a pH insensitive indicator taught by Eakin, specifically the cobalt salt moisture indicator. The Eakin reference merely provides a teaching for one of many uses of cobalt salt moisture indicator. It is also well known that these cobalt salt indicators are used in a variety of arts, one of which is the diaper art where in indicating when moisture is present in diapers. Thus, claims 1-10,16, and 30 remain rejected and claim 33 stands newly rejected.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Candice C. Stokes whose telephone number is (571) 272-4714. The examiner can normally be reached on 8:00am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Candice C. Stokes


Cary E. O'Connor
Primary Examiner